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No. 03-1423

Supreme Court, U.S.
FILED
AUG 30 2004
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

DARIN L. MUEHLER AND ROBERT BRILL,
Petitioners,

v.

IRIS MENA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE NATIONAL LEAGUE OF CITIES, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, COUNCIL OF STATE GOVERNMENTS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL CONFERENCE OF STATE LEGISLATURES, AND NATIONAL ASSOCIATION OF COUNTIES AS *AMICI CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

1. Whether law enforcement officers who have lawfully detained an individual pursuant to a valid search warrant engage in an additional, unconstitutional "seizure" if they ask that person questions about criminal activity without probable cause to believe that the person is or has engaged in such activity.

2. Whether a two to three-hour detention of the occupant of a suspected gang safe-house while officers search for concealed weapons and other evidence of a gang-related drive-by shooting is unconstitutional because the occupant is initially detained at gun-point and handcuffed for the duration of the search.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county and municipal governments and officials throughout the United States.[1] The enforcement of criminal law is one of the principal functions of *amici*'s members. *Amici* therefore have a compelling interest in the resolution of legal issues involving the application of the Fourth Amendment to the procedures used in executing search warrants.

Of particular concern to *amici*, the court of appeals held that when police officers encounter a non-suspect during the course of a lawful search of a premises incident to a violent crime, they cannot use "any of the heightened security measures police officers employ while detaining persons suspected of being violent criminals." Pet. App. 9a. While the court implicitly acknowledged that the police are authorized to handcuff a non-suspect upon the initial encounter, the court further held that police are required to release a person from handcuffs once it becomes "clear" that the person does not pose an "immediate threat." *Id.*

In promulgating this rule, the court of appeals substituted its own judgment, arrived at "'in the peace of a judge's chambers,'" *Graham v. Connor*, 490 U.S. 386, 396 (1989) (other citation omitted), and with the benefit of hindsight, for that of reasonable police officers searching a residence occupied by gang members and a suspect in a drive-by shooting. Moreover, the court below failed to even consider the governmental interests in the safety of officers and occupants and preventing interference with the search and balance them against respondent's Fourth Amendment inter-

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[1] The parties have consented to the filing of this brief *amicus curiae*; their letters of consent have been filed with the Clerk. This brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amici* or their members made a monetary contribution toward its preparation or submission.

ests. Because the court failed to follow this Court's Fourth Amendment jurisprudence and its holding would seriously jeopardize officer and occupant safety and generate extensive litigation, *amici* submit this brief to assist the Court in its resolution of the case.

SUMMARY OF ARGUMENT

1. The Court has held "that a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Michigan v. Summers*, 452 U.S. 692, 705 (1981) (footnotes omitted). While such a detention is a seizure under the Fourth Amendment, *Summers* expressly recognized that the governmental interests in officer and occupant safety and preventing interference with the search outweigh an individual's Fourth Amendment interests.

A police officer's authority to seize a person "necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham*, 490 U.S. at 396. The Court has further held that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* Accordingly, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-97.

The court of appeals disregarded these principles in holding that petitioners violated respondent's Fourth Amendment rights. The court below held that police cannot use any essential "heightened security measures" on a non-suspect encountered during the execution of a warrant. Pet. App. 9a. The court further held that petitioners violated the Fourth Amendment because they kept respondent handcuffed

after it "became clear" that she did not pose an "immediate threat." *Id.*

The court of appeals thereby substituted its own judgment, made "'in the peace of a judge's chambers,'" *Graham*, 490 U.S. 490 U.S. at 396 (other citation omitted), and with the benefit of hindsight, for that of reasonable police officers executing a warrant at a residence of violent gang members. Contrary to the views of the court below, the police, prior to entering a room, typically have no idea what they will encounter. It is constitutionally reasonable for the police to be prepared for the worst and have their weapons ready when, pursuant to a valid warrant, they enter rooms in a residence believed to be occupied by gang members and a drive-by shooting suspect.

The *Summers* Court recognized that "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." 452 U.S. at 702-03. Securing the premises as quickly as possible by taking persons found therein into custody is fundamental to taking control of the situation. It is thus constitutionally reasonable for the police to use appropriate measures to control an adult found in a residence used by violent gang members.

Nor did the police violate the Fourth Amendment because they kept respondent handcuffed for the duration of the search. *Summers* expressly held that a valid warrant "carries with it the limited authority to detain the occupants of the premises *while a proper search is conducted.*" *Id.* at 705 (emphasis added). This holding clearly contemplated a search of "several hours" duration. *Id.* at 711 (Stewart, J., dissenting).

Indeed, a rule that requires the police to remove handcuffs while a search is ongoing would jeopardize officer and occupant safety. More than 80 percent of assaults on police officers are committed with hands, fists and feet. *See* U.S.

Dep't of Justice, FBI, *Law Enforcement Officers Killed And Assaulted: 2002*, 74. The court of appeals ignored that a detainee, even if unarmed, can suddenly attack police officers. Indeed, the court of appeals' rule could encourage criminals to act in a docile fashion to induce the police to remove their handcuffs, wait for the police to let their guard down, and spring a surprise attack. In addition, detainees could be harmed if police lose control of the situation.

Furthermore, the court of appeals' "immediate threat" rule will generate extensive litigation while doing little to advance Fourth Amendment interests. If this rule is upheld, every warrant execution during which police handcuff detainees could give rise to a lawsuit over whether a detainee posed an immediate threat and whether the police were prompt enough in removing the handcuffs. It is unreasonable to impose on the police the choice between being sued for damages if they fail to remove handcuffs or being injured if a detainee whose handcuffs have been removed becomes violent.

ARGUMENT

PETITIONERS ACTED REASONABLY IN DETAINING RESPONDENT DURING THE COURSE OF EXECUTING A SEARCH WARRANT AT PREMISES USED BY VIOLENT GANG MEMBERS

As an initial matter, *amici* agree with petitioners that respondent's Fourth Amendment rights were not violated when she was asked questions during her detention because "the mere questioning of an individual who has been lawfully seized" cannot "constitute an additional, unreasonable seizure." Pet. 9. As this Court has repeatedly stated, "mere police questioning does not constitute a seizure." *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *see also United States v. Childs*, 277 F.3d 947, 950 (7th Cir.) (en banc) ("[p]osing a question" to a person lawfully in police custody "does not meet the Supreme Court's definition of a seizure"), *cert. denied*, 537 U.S. 829 (2002). *Amici* incorporate by reference petitioners' arguments on this question, *see* Pet. Br. 15-23, and will not repeat them here.

Second, petitioners acted in a constitutionally reasonable fashion when they detained respondent in the course of executing a valid search warrant at her residence. The court of appeals erred in holding that petitioners violated respondent's Fourth Amendment rights because they initially pointed a weapon at her prior to handcuffing her and then kept her handcuffed while they executed a valid search warrant. Notwithstanding that the residence harbored violent criminals, the court articulated a new and troubling constitutional rule that when police confront a non-suspect in executing a search warrant, they cannot subject that person "to any of the heightened security measures police officers employ while detaining persons suspected of being violent criminals—such as physical roughness, threatening deadly force, and using handcuffs for an extended period." Pet. App. 9a. Equally disturbing, the court declared that because "Mena was not a suspect in the crime, the officers should have released her from the handcuffs when it became clear that she posed no immediate threat and did not resist arrest – much less resist arrest 'actively.'" *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989) (footnotes omitted)).

As explained below, the court of appeals' holding is irreconcilable with this Court's Fourth Amendment jurisprudence, under which petitioners' conduct was reasonable. *See Graham*, 490 U.S. at 396-97; *Michigan v. Summers*, 452 U.S. 692, 705 (1981). The lower court's rule—that the police cannot use "heightened security measures" in dealing with non-suspects confronted during the execution of a warrant at premises believed to harbor violent criminals—cannot survive scrutiny under *Graham*. Indeed, to the extent the rule subjects the police to liability for pointing a weapon at an adult resident and physically controlling that resident to

handcuff her, the rule violates *Graham*'s admonition that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" that occurs within "'the peace of a judge's chambers.'" *Id.* at 396 (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973) (Friendly, J.)).

The court of appeals also held that the police are required to release a detainee from handcuffs even though a search is still ongoing if that person does not pose an "immediate threat." Pet. App. 9a. This Court should reject this rule which inevitably invites judicial second-guessing of police conduct that is clearly reasonable under the circumstances.

The Court has expressly recognized that the interest in protecting officer and occupant safety justifies the "authority to detain the occupants of the premises while a proper search is conducted." *Michigan v. Summers*, 452 U.S. at 705. The great majority of assaults on police officers are committed by persons using their hands, fists, and feet. *See* U.S. Dep't of Justice, FBI, *Law Enforcement Officers Killed And Assaulted, 2002*, 74. Officers thus cannot assume that a detainee no longer poses a threat merely because she has been searched for a weapon. Nor should they be placed in the position of having to speculate as to whether a detainee might subsequently attempt to attack them. Moreover, the court of appeals' rule will generate extensive litigation over whether the police were prompt enough in removing the handcuffs and whether a person posed an immediate threat. The judgment of the court of appeals should therefore be reversed.

A. Petitioners Acted Reasonably In Detaining Respondent

The Court has previously recognized that the police effectuate "a 'seizure' within the meaning of the Fourth Amendment" when they detain a person on the premises while executing a search warrant. *Michigan v. Summers*, 452

U.S. at 696; *see also Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968) (seizure occurs when "by means of physical force or show of authority, [the police] . . . in some way restrained the liberty of a citizen"). The Court has instructed that "[d]etermining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of '"the nature and quality of the intrusion on the individual's Fourth Amendment interests"' against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396 (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)).

The Court has further recognized that the right "to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id.* at 396 (citing *Terry*, 392 U.S. at 22-27). Moreover, "[b]ecause '[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,' . . . its proper application requires careful attention to the facts and circumstances of each particular case. . . ." *Id.* (citation omitted).

Most significantly, the Court has held that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* (citing *Terry*, 392 U.S. at 20-22). Because the standard assesses the reasonableness of police conduct "at the moment. . . . 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' violates the Fourth Amendment." *Id.* (quoting *Johnson v. Glick*, 481 F.2d at 1033 (Friendly, J.)). Accordingly, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-97.

The court of appeals failed to balance "the nature and quality of the intrusion on [respondent's] Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* at 396 (citations and internal quotations omitted). Instead the court below placed undue emphasis on a portion of the *Graham* opinion which discusses the reasonableness of police conduct in a different context, that of an investigatory stop. *See* Pet. App. 8a-10a.

The court found it dispositive that respondent was not a suspect, that she did not "actively resist arrest or attempt to flee" and concluded that she "posed no 'immediate threat to the safety of the officers or others.'" *Id.* at 8a-9a (quoting *Graham*, 490 U.S. at 396). The court of appeals thus held that the police acted unreasonably because they pointed a weapon at her, "roughly jerk[ed] her off of her bed, march[ed] her barefoot through the rain into a cold garage, and [kept] her in handcuffs" for the duration of the search. *Id.* at 9a. This Court should reject the court of appeals' holding, which reflects "the 20/20 vision of [judicial] hindsight" rather than the requisite inquiry into Fourth Amendment principles. *Graham*, 490 U.S. at 396. Indeed, the court of appeals' reasoning is flawed for several reasons.

First, the court did exactly what *Graham* instructs a court not to do. It mechanically applied *Graham* to a different context, that of a detention during a search, and ignored *Graham*'s essential teaching—that the test of reasonableness "requires careful attention to the facts and circumstances of each particular case" and is to be "judged from the perspective of a reasonable police officer on the scene, rather than with the 20/20 vision of hindsight." *Id.*

While *Graham* noted that the reasonableness of a use of force requires consideration of such factors as "the severity of the crime at issue," "whether the suspect poses an immediate threat" and whether the suspect "is actively resisting arrest or attempting to evade arrest by flight," *id.*, the Court articulated

these factors in a far different factual context. *Graham* did not address the measures which the police may reasonably employ when executing a search of a residence believed to harbor violent criminals. Rather, the case involved an investigatory stop, in which the police allegedly used excessive force and caused physical injuries which included "a broken foot, cuts on [the plaintiff's] wrists, a bruised forehead, and an injured shoulder." *See id.* at 389-90. In contrast, Mena did not allege physical injury. *See* Br. in Op. at 8. In this respect alone, the nature and quality of the intrusion suffered by Graham differs from that alleged by Mena.

The factors which *Graham* enumerated thus are properly understood as guideposts in the context which that case addressed. They are not particularly helpful in evaluating the reasonableness of police conduct in executing a search warrant of premises incident to a violent crime. Indeed, the courts below ignored the fundamental differences that exist between making an investigatory stop and executing a search warrant. While in both situations there is a strong governmental interest "in minimizing the risk of harm to the officers," *Michigan v. Summers*, 452 U.S. at 702, "the task performed by the officers executing a search warrant is inherently more perilous than is a momentary encounter on the street." *Ybarra v. Illinois*, 444 U.S. 85, 107 (1979) (Rehnquist, J., dissenting).

As a leading authority explains, "[t]he circumstances are quite different [in executing a warrant] than in an on-the-street context; the police, obligated to carry out the command of the search warrant, cannot simply avoid the suspect and conceal their suspicions of him[.]" 2 Wayne R. LaFave, *Search And Seizure: A Treatise on the Fourth Amendment*, § 4.9(e), at 645-46 (3d ed. 1996). When the police confront a suspect on the street, they can readily observe the suspect. Moreover, there are only a limited number of places where a

suspect can hide a weapon. Indeed, the police can choose to avoid the suspect altogether. *See id.*

In contrast, when the police execute a search of a residence, they are required to enter spaces that typically are not observable until entering. Upon preparing to enter a room, the police may have no idea of what they will encounter. In addition, in a residence there are a far greater number of places for a suspect and his associates to either hide a weapon or lie in wait.[2]

In executing a warrant at a residence used by gang members suspected of a violent crime, it is constitutionally reasonable for the police to prepare themselves for the worst and have their weapons at the ready when they enter the rooms of the residence. Indeed, the conduct which the court below found to be constitutionally objectionable appears to have lasted no longer than the time it took to take Mena into custody. It is clearly reasonable for the police to display a weapon when executing a search warrant at a residence believed to harbor violent gang members.

In *Summers* the Court held "that a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises

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[2] In 2001, at least seven police officers were killed in the line of duty while assisting in the execution of a warrant at a residence. *See* U.S. Dep't of Justice, FBI, *Law Enforcement Officers Killed and Assaulted: 2001*, 48 (death of L.A. County sheriff's deputy while assisting federal ATF agents in serving search warrant); *id.* at 50 (death of Atlanta Police Department Narcotics Team member while serving a search warrant); *id.* (death of Jerome County, Idaho, sheriff's deputy while searching residence of suspected drug dealer); *id.* at 52-53 (deaths of two Jessamine County, Kentucky, sheriffs deputies who were murdered by 75 year old man while executing arrest warrant); *id.* at 55 (death of Prentiss, Mississippi, officer while executing search warrant for narcotics), *id.* at 60 (death of Travis County, Texas, deputy while executing search warrant for narcotics).

while a proper search is conducted." 452 U.S. at 705 (footnotes omitted). As the Court explained, when a warrant has been issued "[a] judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime. . . . *The connection of an occupant to that home* gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant." *Id.* at 703-04 (emphasis added). Thus, *Summers* does not require that the police conduct a separate evaluation of whether each occupant they encounter in the course of executing a warrant poses an "immediate threat" before using necessary measures to compel cooperation and secure the premises.

The Court's "Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham*, 490 U.S. at 396. Moreover, there are other governmental interests that authorize police to both display and use force in executing a warrant. As the Court recognized in *Summers*:

> *Although no special danger is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.*

452 U.S. at 702-03 (footnote omitted) (emphasis added).

Securing the premises as quickly as possible by taking persons found therein into custody is fundamental to "exercis[ing] unquestioned command of the situation." *Id.* It was thus constitutional for the police to use a reasonable amount of physical force to control an adult found in a residence believed to harbor violent gang members. Contrary to the views of the court of appeals, the Fourth Amendment

did not require police officers to speculate as to whether Mena may have had ready access to a weapon or whether she was a gang member or sympathizer before taking necessary action to expeditiously detain her.

B. The Court of Appeals' "Immediate Threat" Rule Jeopardizes The Safety Of Both Law Enforcement Officers And Occupants Of Searched Premises And Does Not Advance Fourth Amendment Interests

The court of appeals implicitly conceded that it was reasonable for the police to handcuff Mena at the outset. *See* Pet. App. 9a; *see also id.* at 29a (Kleinfeld, J., dissenting from the denial of rehearing en banc) ("the panel apparently concedes that handcuffing her at the outset was permissible"). The court nonetheless created a new rule holding that the police acted unreasonably because "the officers should have released [Mena] from the handcuffs when it became clear that she posed no immediate threat and did not resist arrest—much less resist arrest actively." *Id.* at 9a.

The *Summers* Court expressly held, however, that a search warrant supported by probable cause "implicitly carries with it the limited authority to detain the occupants of the premises *while a proper search is conducted.*" 452 U.S. at 705 (emphasis added). The length of Mena's detention complied with this standard.

To be sure, *Summers* noted that "special circumstances, or possibly a prolonged detention, might lead to a different conclusion in an unusual case." 452 U.S. at 705 n.21. But contrary to the view of the court of appeals, Mena's detention was not so prolonged as to render it unreasonable. Indeed, as Justice Stewart observed in his dissent in *Summers*, "a detention 'while a proper search is being conducted' can mean a detention of several hours." 452 U.S. at 711 (Stewart, J.). *Summers* thus clearly contemplates that a detention of a

length such as occurred here is reasonable as long as the search is conducted in a diligent manner. *See id.* at 701 & n.14.

Indeed, the court of appeals' holding requiring the police to remove a detainee's handcuffs while a search is ongoing is problematic for several reasons. First, the rule begs the question of whether the police can use any sort of coercive measures in continuing to detain individuals found on the premises in which violent criminals reside.

Second, the rule would jeopardize the safety of both the police and occupants. FBI reports consistently show that over 80 percent "of assaults on law enforcement officers . . . were committed with personal weapons such as hands, fists, feet, etc." *Law Enforcement Officers Killed And Assaulted, 2002*, *supra*, at 74 (80.6%). *See also* U.S. Dep't of Justice, FBI, *Law Enforcement Officers Killed And Assaulted, 2001*, at 85 (80.2%); U.S. Dep't of Justice, FBI, *Law Enforcement Officers Killed And Assaulted, 2000*, i (81.7%). Moreover, nearly thirty percent of officers assaulted with personal weapons were injured. *See Law Enforcement Officers Killed And Assaulted, 2002*, *supra*, at 74. As these statistics demonstrate, keeping people handcuffed during a search is essential to officer safety.

The court of appeals' rule thus subjects police to a heightened risk of assault by denying them the authority to use reasonable measures to restrain potential assailants. It is unreasonable to impose on the police the choice between being sued for damages if they fail to remove a detainee's handcuffs or the risk of being injured if a person whose handcuffs have been removed turns violent.[3] Indeed, the court

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[3] While the majority of police officers murdered in the line of duty are killed by men, since 1993 a police officer has been murdered in the line of duty by a woman almost every year. *See Law Enforcement Officers Killed And Assaulted, 2002*, *supra*, at 42. Moreover, in 2002, at least

of appeals' rule could result in harm to both the assailant and other detainees because in the event of an assault, the police would be justified in using force for their own protection.

Furthermore, many criminals would eventually become aware of the court of appeals' rule and could use it to resist searches. Knowing the rule, criminals could act in a docile fashion to induce the police to remove their handcuffs, wait for the police to let their guard down and then spring a surprise attack. *See, e.g.*, page 13 n.3, *supra*. An assailant could gain control of the officer's weapon with disastrous consequences for both law enforcement officers and other persons on the premises.

Finally, the Court should reject the "immediate threat" rule because it will generate extensive and wasteful litigation while failing to advance Fourth Amendment interests. Under the rule, every warrant execution during which the police handcuff detainees could give rise to a lawsuit over whether a detainee posed an "immediate threat" and whether the police were prompt enough in removing a detainee's handcuffs. Litigation of the issues would usually require extensive discovery; the cases would typically raise issues of credibility that could only be resolved by trial.

58,000 police officers "were assaulted in the line of duty." *Id.* at 73. The Justice Department does not break down assaults on police officers by the gender of the attacker.

Indeed, making assumptions based on stereotypes has cost police officers their lives. For example, in November 2001, two officers of the Jessamine County, Kentucky, Sheriff's Office were killed and one was seriously wounded while attempting to serve an arrest warrant on a 75-year-old man. The officers allowed "the suspect, who appeared to be finally cooperating with the deputies, into his home to get clothes and shoes. Suddenly, the man reached under his bed and pulled out a .30 caliber semiautomatic rifle and began firing at the officers." *Law Enforcement Officers Killed and Assaulted, 2001*, *supra*, at 53.

Nor would recognizing these claims advance Fourth Amendment interests. True enough, being handcuffed when one has not committed a crime is an unpleasant experience. But being kept handcuffed when the police have lawful authority to detain one, *see Summers*, 452 U.S. at 705, is at most an incremental intrusion on one's Fourth Amendment interests. Indeed, it pales in comparison to such intrusions as "an arrest based on probable cause, [where] the wrong person was arrested," and "the mistaken execution of a valid search warrant on the wrong premises," both of which were held not to violate the Fourth Amendment. *Graham*, 490 U.S. at 396 (citing *Hill v. California*, 401 U.S. 797 (1971), & *Maryland v. Garrison*, 480 U.S. 79 (1987)). *See also Summers*, 452 U.S. at 701-02 ("The detention of one of the residents while the premises were searched, although admittedly a significant restraint on his liberty, was surely less intrusive than the search itself. . . . [B]ecause the detention in this case was in respondent's own residence, it could add only minimally to the public stigma associated with the search itself and would involve neither the inconvenience nor the indignity associated with a compelled visit to the police station.") (footnote omitted).

As the foregoing demonstrates, the governmental interests in the safety of law enforcement officers and occupants and preventing interference with the execution of a search clearly outweigh the intrusion imposed on Mena by being handcuffed for the duration of the search. The court of appeals, however, failed to conduct any analysis of these respective interests. *See* Pet. App. 8a-10a.

In short, contrary to the views of the court below, the police acted reasonably in executing the search warrant at Mena's residence. The Fourth Amendment does not require police officers, who execute a valid warrant at premises used by violent gang members, to assume the risk that persons found on the premises will remain docile and cooperative throughout the search.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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